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Innovations in Conflict Management

Research Papers

Research Paper 3

**The Development of Conflict Resolution Practices in
Ireland**

**Paul Teague,
Queen's University Belfast**

**William K. Roche,
University College Dublin**

**Tom Gormley,
University College Dublin**

**Denise Currie,
Queen's University Belfast**

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Introduction

This paper examines the development of practices and procedures for conflict management in Ireland. It focuses both on the development of conflict management institutions at national level and, to the degree that the available data permits, on developments in firms and workplaces. The paper begins by providing an overview of conflict resolution institutions and of various innovations within these institutions. It then addresses recent legislative proposals to encourage the wider adoption of some conflict resolution practices and proposals for restructuring the main conflict resolution agencies. The paper finally examines developments in conflict resolution in firms and workplaces.

The Development of Institutions for Conflict Resolution

Organizations in Ireland are more or less free to develop their own conflict management practices, consistent with any sector or national agreements on dispute resolution procedures to which they may be subject. However, workplace conflict management does not operate in a vacuum. Over the years, a series of public agencies have been established to facilitate the resolution of workplace conflict in a variety of different ways. The previous paper reviewed trends in the activities of these agencies. Here we overview their functions and outline their development.

Collective disputes: For the most part, collective dispute resolution in Ireland in the private and commercial state-owned sectors was dominated by the operations of the Labour Court from its foundation in 1946. The Court was established to control an expected pay explosion following the ending of wartime pay control in 1946. The Court's principal architect, Sean Lemass, had originally envisaged that it might operate as part of a corporatist framework that would co-ordinate pay determination with economic policy. In the event the Court emerged and developed as a pivotal institution of Ireland's voluntary system of industrial relations (Roche 2009). Prior to the establishment of the Labour Court, dispute settlement in peacetime had been handled by a division within the Department of Industry and Commerce (Quinn 1952). The Labour Court provided a conciliation and adjudication service, geared mainly to resolving disputes between trade unions and employers or employers' associations. The Court's conciliation service, charged with resolving disputes that could not be settled in workplaces or through sector-level bargaining, was staffed by career public servants. Members of the Labour Court, which adjudicated in the main disputes that had proven incapable of resolution through conciliation, were nominated by employer and union

organizations, and the Court was presided over by a chairman appointed by the responsible minister (currently the Department of Jobs, Enterprise and Innovation). Labour Court adjudication is not normally legally binding on the parties to a dispute. There are however important exceptions where binding powers are conferred on the Court by collective agreements or by statutes, or where employment rights are at issue. In recent years the Labour Court has on occasion made use of facilitators or mediators in circumstances where the Court believes that progress in resolving disputes required further engagement between the parties in dispute (Curran 2014). Teams of facilitators that include members from a trade union background as well as an employer background are assigned to assist the parties to make progress in their dispute prior to the Court hearing or rehearing the case. The number of disputes subject to this procedure is very small.

In 1990, the conciliation service of the Labour Court was hived off into a new body, the Labour Relations Commission (LRC), which was also charged with the promotion of good industrial relations through its Advisory Service. The LRC also assumed responsibility for the administration of the Rights Commissioner Service, which had been established in 1970 to handle disputes involving individuals or small groups. Rights Commissioners operate by providing mediation and adjudication in disputes that arise either from disagreements with respect to terms and conditions of employment or from alleged breaches of individual employment rights (Cashell 2010; Hann & Teague 2012). Rights Commissioners are ministerial appointments, nominated by the LRC following consultation with employers and trade union organizations. Guidelines for grievance and disciplinary procedures and for the handling of workplace bullying are laid down in codes of practice developed by the LRC. Guidelines for grievance and disciplinary procedures are conventional in character and do not make specific provision for using ADR practices. On occasion the LRC has proposed that parties to disputes should avail of mediation in circumstances where conventional conciliation has failed to resolve disputes (Curran 2014). The incidence of LRC-instigated mediation remains very small.

For now, the LRC, the Labour Court and the Rights Commissioners remain the pivotal institutions for dispute resolution in Ireland in the private and commercial state-owned sectors. The Rights Commissioners and the Court, in particular, have gained progressively broader jurisdictions as employment rights have been extended through legislation, especially in recent decades. While all employees can access the Rights Commissioners, the jurisdiction of the LRC and the Labour Court has also expanded as groups of public service workers,

restricted in the past to public service conciliation and arbitration schemes, have also gained access to both bodies. The LRC and the Labour Court deal mainly with unionized sectors and the unionized workforce. The Rights Commissioner Service extends more widely across unorganized firms and workers.

The provision of procedures for dispute resolution in a series of national pay agreements during the 1970s and again under national social partnership agreements between 1987 and 2009, copper-fastened the role of the LRC and the Labour Court in collective dispute resolution. Under each of these regimens of national pay bargaining, referral to conciliation and adjudication was a mandatory feature of dispute resolution for all issues covered in national agreements. From 2003 Labour Court recommendations on pay-related disputes and disputes over normal on-going change became binding on parties to national agreements.

A further development in the field of dispute resolution was the establishment in 2000 of the National Implementation Body (NIB). The NIB arose out of increasing concern, especially on the part of employers, with pay drift and threats of industrial disruption during the height of the economic boom (Higgins & Roche 2013). The NIB formalized earlier *ad hoc* joint conflict resolution initiatives by senior figures in the ICTU and IBEC. Membership of the NIB comprised senior officers of the Irish Congress of Trade Unions and the Irish Business and Employers' Confederation (IBEC) and senior public servants. The role of the NIB was to supplement existing conflict resolution agencies by using the influence and networks of its members to head-off, resolve or refer disputes that threatened social partnership pay agreements or that had caused or might cause disruption to essential services. In this way the NIB can be viewed as a kind of 'network-based' conflict resolution institution that was quite different in kind to other formal third-party conflict resolution institutions. The NIB was party to the resolution of a number of high-profile disputes and also worked to prevent pay drift in buoyant sectors from spreading across the economy and undermining national pay agreements (Higgins & Roche 2013). The NIB was disbanded in 2010 following the collapse of social partnership. Provision for a tripartite body to perform some of the functions previously performed by the NIB was contained in a 'protocol' for collective bargaining and dispute resolution, agreed between IBEC and the ICTU following the return to firm-level bargaining in 2010. Although this body has largely remained dormant, a possible role for a NIB-like institution was retained in a subsequent extension of the protocol to the end of 2013.

Disputes in the public service are handled through a series of conciliation and arbitration (C&A) schemes. The C&A schemes were introduced from 1950, as collective bargaining became the established formal mechanism for determining the pay and conditions of public servants. Conciliation has in practice involved negotiations, presided over by a chairman, drawn from the employer side, sometimes but unusually facilitated by a mediator appointed by the Minister for Finance. Arbitration has been provided by boards comprising members drawn from unions and employers, presided over by an independent chair (McGinley 1997).

Following the collapse of social partnership at the end of 2009, public service employers and unions entered a period of industrial relations turbulence, marked by short work stoppages in some agencies and the prospect of wider-scale industrial conflict. In March 2010 the parties reached an accord (the ‘Croke Park Agreement’ (CPA)) in which the employers agreed that no further pay cuts or compulsory redundancies would be imposed up to 2014 in return for union co-operation with cost-saving reforms, changes in service delivery and work practices and the redeployment of staff. The Croke Park Agreement was comprehensively facilitated and conciliated by the LRC. Under the Croke Park Agreement, a new Implementation Body was established to monitor and verify savings and reforms and to deal with any implementation issues that arose. The body had an independent chair and three members drawn from the employer and union sides. The Implementation Body provided a forum for addressing interpretation and implementation difficulties before their onward referral for conciliation and/or arbitration.

Depending on the groups involved, disputes under the CPA are referred for resolution either to the LRC and Labour Court or to the relevant public service C&A scheme. In either case ‘final’ or binding decisions are delivered. All stages of the procedure are marked by agreed time limitations (Department of Public Expenditure and Reform 2013). In the health service, matters covered by the CPA on which the parties failed to reach agreement could be referred to a joint management union review group, which could assist the parties in reaching agreement. Where agreement could not be reached at this stage in the procedure, either party could refer matters onwards to an agreed adjudicator who issued binding proposals. Overall the use of local review groups was small and the process was based in the main on traditional procedures, culminating in Labour Court Recommendations.

The conflict resolution procedures set down in the CPA were extended into the Haddington Road Agreement (HRA) concluded between the State and public service unions in 2013. The

provision to refer staff appeals against decisions on redeployment to an independent adjudicator, who might issue a binding decision, was extended to the civil service and non-commercial semi-state bodies (LRC 2013: 27). In all, 29 instances of binding arbitration were reported under the CPA, many involving significant groups of public servants and health service employees. The mechanism was widely regarded as highly successful (*Industrial Relations News*, 30 January 2013).

Individual employment grievances: Individual employment grievances arising from a progressively widening area covered by employment statutes are dealt with in the main by the Employment Appeals Tribunal (EAT) and the Equality Tribunal. Both agencies have seen their remits expand significantly. The EAT was established in 1977, originally to hear grievances under the redundancy payments acts and subsequently under the growing body of employment legislation. The EAT also deals with appeals from Rights Commissioner adjudications on matters covered by employment law. The EAT operates in divisions comprising persons nominated to the Tribunal from union and employer associations and a legally trained chair, who is a ministerial appointee. The Equality Tribunal was established in 1999 out of the Office of the Director of Equality Investigations; prior to that grievances and disputes concerning employment equality were handled by the LRC and the Labour Court. The Tribunal can mediate complaints and, if either party rejects mediation, Equality Officers investigate and issue legally binding decisions. A separate Equality Authority, established in 1999 in succession to the Employment Equality Agency established in 1977, operates as an advocacy body for equality both in employment and more generally. The agency also provides advice on progressive policies for managing equality and diversity in workplaces. The Equality Authority also provides an information service on rights and offers a legal service in cases deemed to be of strategic importance and to be referred on that basis to the Equality Tribunal.

A further public agency, the National Employment Rights Authority (NERA) was established in 2007 on foot of commitments in the national social partnership programme negotiated in 2006. The establishment of NERA reflected growing concern on the part of unions that employment rights were often being breached, without detection or redress. This development was attributed in particular to the sharp rise in immigration and had been in contention in several high-profile scandals and debacles surrounding the deployment of migrant workers and the consequences for Irish workers. NERA's assigned role was to tighten up on the enforcement of employment rights and to provide people with information

on rights at work. NERA can pursue prosecutions under employment statutes and also polices the enforcement of binding Labour Court and EAT determinations.

A civil service grievance procedure in existence since 1984 provides for a multi-step process. The procedure contains a provision for mediation, followed by the possible issuing of recommendations by a 'mediation officer'. Grievances are referred to the mediation officer by complainants, subject to approval by an agency's personnel officer. In specific circumstances referral to mediation is mandatory (loss of earnings due to the issue in dispute, redeployment with specific strictures). In other circumstances it is proscribed (selection, promotion, regrading) (Department of Public Expenditure and Reform 2014). The overall incidence of mediation is very low, amounting to a handful of cases in any year (excluding cases involving bullying and harassment); even then the use of mediation appears marginal and requests are commonly subject to refusal (*Civil Service Grievance Procedure Annual Reports by the Mediation Officer*, 2006–2008).

Innovations in Conflict Resolution Services

Some innovations in dispute resolution practices and mechanisms have occurred within the public agencies involved in the area. The Labour Relations Commission now provides a workplace mediation service for individuals and small groups involved in grievances and disputes. Mediation is designed to assist the parties to resolve conflict before it becomes subject to formal dispute and grievance resolution processes, including those provided by the LRC itself. The scale of this service, involving 45 referrals in 2009, is dwarfed by the levels of activity in the LRC's conciliation and Rights Commissioner Service. Most of the referrals concern interpersonal difficulties between employees and managers, but some mediation has also involved groups of employees (Labour Relations Commission 2009: 24). The Rights Commissioner Service combines adjudication and mediation when addressing grievances, including grievances on issues covered by statute (Teague & Hann 2012). The Advisory Service of the LRC conducts other non-traditional forms of collective dispute resolution, including 'preventive mediation'. Again the scale of this activity is very modest compared to the LRC's more traditional activities. Finally, since the 1990s the LRC has provided intensive facilitation, resembling the form of ADR, sometimes referred to as 'assisted negotiations'. LRC facilitation of this type typically occurs in cases where significant businesses are undergoing complex programmes of change and restructuring. This practice evolved out of established modes of conciliation rather than being planned as a wholly new initiative.

As union density in Ireland and the coverage of collective bargaining continued to grow up to the 1980s, the Labour Court and its associated services increasingly provided the standard means for resolving conflict in Irish employment relations for growing numbers of firms and employees. From then, however, as union density went into near progressive decline and the coverage of collective bargaining contracted, the Labour Court (and latterly the LRC) has become synonymous with dispute resolution in the shrinking unionized sector. This sector still however encompasses essential services, key utilities and some of Ireland's largest and most prominent companies.

Mediation in disputes concerning individual employment rights is provided for by the Equality Tribunal, which otherwise undertakes a quasi-judicial role in administering the Employment Equality Acts, Equal Status Acts and the Pensions Acts. Mediation is an option for the parties to disputes under the Equality and Equal Status Acts. The level of usage of mediation in 2011 was not insignificant, representing 206 cases or 31 per cent of all cases; 62 per cent of all mediated cases were closed through mediation with no need for onward referral to adjudication (Equality Tribunal 2011: 12). The rate of complaints submitted to mediation and settled through mediation has increased over the past decade. A survey of mediation users revealed a very high level of satisfaction with the process (Equality Tribunal 2009). No provision exists for mediation in the case of the Employment Appeals Tribunal, which administers the widest range of individual employment rights. The EAT deals with about 12 times the number of employment rights cases dealt with by the Equality Tribunal. The increasingly technical and adversarial character of EAT hearings has been a subject of long-running comment and the absence of a mediation option at the EAT has also been debated (see Brady 2011).

Bullying and harassment at work can form the basis of individual grievances and these areas are covered by the Equality Act 1989 and the Safety, Health and Welfare at Work Act 2005. Codes of practice to guide the handling of grievances in these areas within organizations have been developed by the Health and Safety Authority (HSA), the LRC and the Equality Authority. The codes of practice of the main agencies in the field, the LRC and the HSA, follow the same general steps. Organizations are encouraged to develop anti-bullying policies as a preventive measure (HSA 2007). Where incidents of bullying arise, complainants may seek support from designated contact persons and might first opt to resolve incidents informally. If informal processes, that could include mediation, are deemed unsuitable or have failed to resolve incidents, formal investigations are the designated next step. These may

be conducted by either a designated senior manager or an agreed third-party. A right of appeal by either party is recognized and, if procedures within organizations fail to resolve incidents, either party can resort to external agencies in line with agreed industrial relations procedures (HSA 2007; LRC 2006).

The Reform of Conflict Management Institutions

The history of conflict management institutions in Ireland has been one of ongoing piecemeal innovation, sparked by specific problems and challenges and by the evolution of European and Irish employment law. The result of this pattern of institutional change is a complex patchwork of agencies with overlapping jurisdictions and mandates and many cross-referrals of cases (Doherty & Teague 2012). As well as the duplication of resources and services and the highly opaque system that has resulted, observers have pointed to other problems such as ‘forum shopping’ by some complainants who hedge their bets by simultaneously submitting claims to several agencies (Department of Jobs, Enterprise and Innovation 2011).

Though these problems have been evident for some time, the drive to cut costs and merge public agencies that resulted from the recession and fiscal crisis from 2008 was the catalyst for proposals to reform the dispute resolution bodies. The basic blueprint for reform is straightforward. Two independent agencies will resolve both individual and collective conflict. A new Workplace Relations Commission (WRC) will incorporate the current activities of the LRC, NERA, the Equality Tribunal and the first instance adjudication functions of the EAT. The current appellate function of the EAT will be merged into the Labour Court (Department of Jobs, Enterprise and Innovation 2011). The reform documentation and debate suggest that greater priority will henceforth be given to resolving individual complaints and collective disputes of both rights and interests as early and as close to the workplace and site of conflicts as possible. A new conciliation and early resolution service in the WRC will be mandated to include ADR services in grievance and conflict resolution, with a view to precluding the need for adjudication by the WRC. Failing the resolution of grievances by the conciliation and early resolution service, the WRC will engage in ‘first-instance adjudication’. The new agency also assumes responsibility for information provision and for fostering positive working relationships (Department of Jobs, Enterprise and Innovation 2011). The LRC will also be responsible for a new compliance function, incorporating the current work of NERA. The Labour Court retains much of its current jurisdiction, hearing appeals in disputes and grievances of interests and rights on

referral from the WRC. The Court will also acquire the current appellate functions of the EAT.

Further proposals for reform and innovation in conflict resolution have emanated from other national institutions. In 2010 the Law Reform Commission advocated that firms adopt ADR practices at workplace level. The Commission also endorsed the principle of including a mediation option in employment contracts provided that disputants retained the right not to pursue such an option (Law Reform Commission 2010: 102). The Commission proposed a draft statute that might provide a legislative basis for mediation and conciliation in areas, such as those encompassed at present by the EAT, where no such provisions currently exist (Law Reform Commission 2010).

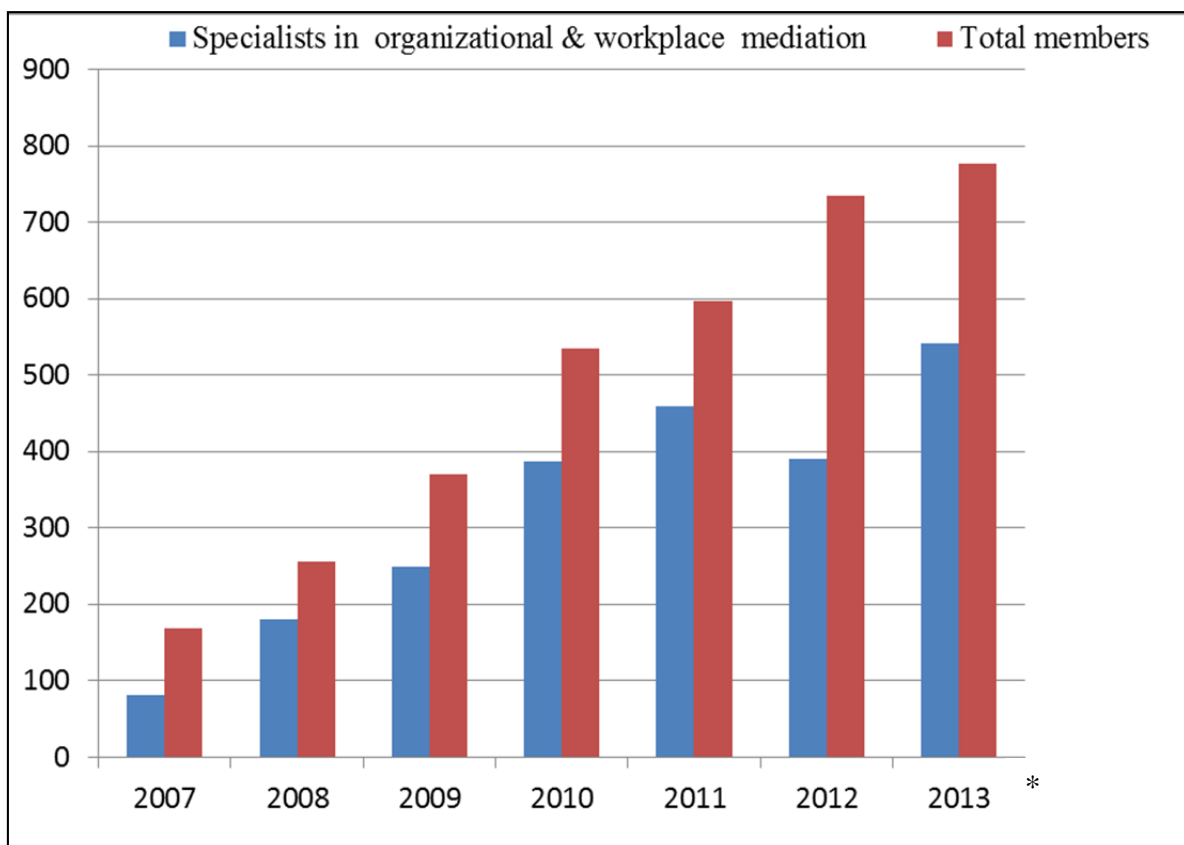
A Mediation Bill was introduced in 2012 to give effect to the proposals of the Law Reform Commission by promoting and regulating the use of mediation in commercial and civil proceedings and in family law (Houses of the Oireachtas 2012). The proposals contained in the 2012 Bill do not apply to employment grievances and disputes referred to the LRC, Labour Court, the Equality Tribunal, EAT, NERA and any successors to these institutions. This provision has been included so as not to replace existing mediation or other dispute resolution processes operated by these institutions. Nor does the Act apply to internal dispute resolution mechanisms that are part of an employment contract (Houses of the Oireachtas 2012: 6–7).

In seeking to promote the use of early dispute resolution, section 33 of the *Employment Law Compliance Bill 2008*, debated by the Irish Parliament prior to its dissolution in February 2011, envisaged ‘general duty’ for parties as far as possible to resolve grievances and disputes at workplace level, in accordance with any arrangements in place for resolving conflict. However the *Arbitration Act 2010*, which regulates the practice of arbitration, excluded employment and industrial relations arbitration, apparently because provision for arbitration in these areas already existed under a little used provision section of the *1946 Industrial Relations Act*. Under Section 70 of the 1946 Act, the Labour Court can refer a dispute to arbitration. The exclusion of employment grievances and disputes from the scope of the 2010 Act means that the use of employment arbitration under firm-level procedures remains relatively unregulated.

There has been a significant rise in the incidence of conflict resolution experts, mediators and industrial relations ‘fixers’ of various kinds. The personnel involved in this area are often

former HR managers or trade union officials, who provide services that parallel those of the established institutions and who sometimes offer services under the explicit rubric of ADR. There has also been a sharp rise in the incidence of courses of study of various kinds and at different levels in ADR and related techniques. Experts in mediation have also formed a new professional association, The Mediators' Institute of Ireland (MII), which provides accreditation for programmes of study. While membership of this body extends to people providing mediation across a broad range of spheres, including commercial, family and community mediation, the MII also hosts a group of practitioners with expertise in organizational and workplace mediation, numbered at about 540 in 2013. Figure 3.1 shows the steep rise in organizational and workplace mediators.

Figure 3.1 The Trend in Organizational and Workplace Mediators within the Mediators' Institute of Ireland



Source: Mediators' Institute of Ireland.

* Data for 2013 related to the position as of October that year.

Conflict Resolution in Workplaces

Data on historical developments in conflict resolution in workplaces in Ireland is scant. Nevertheless, the diffusion of formal disputes and grievance procedures appears to have developed hand in hand with the development of professional personnel and industrial relations management. Other developments were also significant. These included a vogue from the 1960s in the negotiation of so-called ‘comprehensive agreements’ which covered pay and conditions and also disputes procedures (Roche 1992: 313). Also important from the 1970s was the growing body of employment legislation, especially the Unfair Dismissals Act 1977. The predecessor of IBEC, the Federation Union of Employers (FUE), also observed in 1980 that procedures developed in part due to a widening substantive agenda in industrial relations linked to accelerating change in product markets, labour markets and technology (FUE 1980).

Without referring to empirical evidence, the Commission of Inquiry on Industrial Relations, established in 1978, complained about the absence of widely applicable dispute procedures and viewed this as a ‘fundamental defect of current industrial relations practice’ (Commission of Inquiry on Industrial Relations 1981: 87). In fact studies during the 1970s and 1980s indicated that disputes and grievance procedures were quite widely prevalent in Irish industry. A 1975 survey of manufacturing firms by Gorman *et al.* found that upwards of 80 per cent of large firms (with 500 or more employees) and more than 66 per cent of medium-sized firms (100–499 employees) had formal procedures in place for dealing with claims, grievances and disciplinary action. Less than a third of small firms (25–99 employees) had formal procedures in these areas. This finding accords with a later study of small firms in the Mid-West which found that few, irrespective of whether they were unionized or non-union, had formal procedures for conflict resolution, even though a significant number had dealt with cases at the Rights Commissioners or the EAT (Gunnigle & Brady 1984).

A survey of 141 manufacturing firms with 50 or more employees found that nearly 90 per cent of companies had formal procedures. The incidence in unionized firms was highest (Murray 1984). The position outside manufacturing was unclear with some observers judging that formal procedures were significantly less prevalent in services (Wallace 1987: 134). A representative survey of workplaces in firms with 20 or more employees in 1996–97 collected data on several facets of grievance and dispute resolution. Forty per cent of workplaces in Irish-owned firms made use of state-provided third-party facilities for

resolving disputes compared to 70 per cent of workplaces in multinational subsidiaries. Twenty per cent of Irish workplaces confined grievance handling within the firm, compared to a third of foreign multinationals (Geary & Roche 2000: 117-8). The incidence of formal procedures was substantially lower in workplaces in smaller firms. Multinationals (including US multinationals) were also more likely either to resort to state agencies to resolve disputes than their Irish counterparts or to operate forms of grievance handling where the formal final stage of procedure was confined within the firm.

The most reliable data on the incidence of procedures and practices for resolving conflict derive from a survey conducted in 2008 by Hann *et al.* (2009). A large representative sample of 505 firms in Irish private and commercial state-owned sectors employing 20 or more people revealed that 62 per cent, employing some 79 per cent of the workforce within the sectors covered, had formal written grievance and disciplinary procedures that involved progressively higher levels of management in resolving disputes affecting individual employees (Hann *et al.* 2009: 17). As in earlier surveys, these multi-step procedures were found to be significantly more pronounced in medium and large firms (employing 50 or more people) than in small firms and were somewhat more pronounced in manufacturing than in service firms. Formal written disputes procedures for resolving conflict involving groups of employees were in place in 43 per cent of workplaces, employing about 55[per cent????] of the workforce in the sectors covered by the survey. These procedures were again more common in medium and large than in small firms (70 per cent compared to 41 per cent) and somewhat more common in manufacturing than in service firms. Whereas formal procedures for resolving individual conflict were more common in unionized than non-union workplaces (70 per cent compared to 61 per cent), not surprisingly, formal procedures for handling group conflict were more pronounced in unionized than in non-union workplaces (51 per cent compared to 40 per cent) (Hann *et al.* 2009: ch. 4). The results of earlier research showing that formal grievance and dispute procedures were more common in foreign-owned multinationals than in Irish firms were mirrored in this study.

Among general influences on firms' approaches to conflict resolution, responding to the expanding body of employment legislation, expediting conflict resolution and resolving conflict within the boundaries of organizations, emerged as priorities (Hann *et al.* 2009: 14–16).

The overall incidence and workforce penetration of individual and group ADR practices is outlined in Tables 3.1 and 3.2 overleaf. Individual forms of ADR, other than the use of external experts acting in a mediation, facilitation or other related capacity, remain uncommon. The incidence and penetration of various forms of group ADR is, however, significantly higher.

Table 3.1 ADR Practices for Handling Individual Grievances in Firms in Ireland

	<u>% of Firms</u>	<u>% of Employees</u>
<i>Conventional Practices</i>		
Formal written grievance & disciplinary procedures involving progressively higher levels of management in resolving disputes	62.0	78.5
<i>ADR Practices</i>		
Use of external experts (other than Rights Commissioners, LRC or Labour Court)	16.3	19.0
Use of review panels comprising employees' peers	2.9	3.1
Use of review panels comprising managers	5.9	4.9
Use of an employee 'hotline' or email-based 'speak-up' service	3.6	8.6
Use of company ombudsperson	1.6	2.9

Source: Hann, Roche & Teague, *Managing Workplace Conflict in Ireland*, Dublin: Government Publications for the Labour Relations Commission, Table 2, p. 14.

Note: Based on a sample of 505 firms in the private & commercial state-owned sectors in Ireland, employing 20 or more employees, in 2008.

Table 3.2 ADR Practices for Handling Group Disputes in Firms in Ireland

	<u>% of Firms</u>	<u>% of Employees</u>
<i>Conventional Practices</i>		
Formal written grievance & disciplinary procedures involving progressively higher levels of management in resolving disputes	50.8	71.2
Resort at final stage in procedure, where deadlock remains, to Labour Relations Commission and Labour Court	40.6	63.9
<i>ADR Practices</i>		
Use of external experts to assist in reaching settlement or to prevent deadlock in discussion or negotiation with the company	30.9	42.5

Use of ‘brainstorming’, problem-solving and related techniques to solve problems or resolve disputes	29.8	26.2
Use of formal interest-based (‘win-win’) bargaining techniques to resolve disputes	17.2	28.3

Source: Hann, Roche & Teague, *Managing Workplace Conflict in Ireland*, Dublin: Government Publications for the Labour Relations Commission, Table 5, p. 19.

Note: Based on a sample of 505 firms in the private & commercial state-owned sectors in Ireland, employing 20 or more employees, in 2008.

Large minorities of firms report having adopted, or having resorted to, one or more forms of group ADR, including assisted negotiations, brainstorming or related problem-solving techniques and interest-based bargaining. These forms of ADR are found to have significant levels of workforce penetration.

Further analysis of the data reported in Tables 3.1 and 3.2 sought to establish whether either individual or group practices for handling conflict, or both sets of practices in combination, were adopted in systematic sets or bundles, as might be expected from the literature on conflict management systems (CMSs). In the case of individual practices, statistical analysis could identify no systematic sets or bundles, implying a pattern in which firms in general had adopted many permutations and combinations of practices and pointing to a largely piecemeal mode of adoption of individual forms of ADR.¹ This does not mean that no such systematic CMSs exist but only that in statistical terms their occurrence is very limited.

In the case of group forms of ADR the picture is again different (see Roche & Teague 2011). Table 3.3 presents the results of statistical analysis of the pattern of adoption of practices for handling group conflict. It emerges that firms have adopted these practices in a more systematic manner. A model identifying the four sets of practices, or four ‘conflict management systems’ reported in Table 3.3, provides a good statistical representation of the pattern of adoption of group practices.² Four groups of firms with quite distinct sets of practices or ‘conflict management systems’ are evident. The figures in the columns of Table 3.3 estimate the probability that firms in each group have adopted each of the practices in the rows of the Table. What can be described as a ‘minimal system’ prevails in about 4 out of 10 firms and involves few group conflict management practices other than sometimes formal multi-step disputes procedures. About 30 per cent of firms have adopted what is termed a ‘traditional industrial relations system’. This comprises formal disputes procedures, resort to the LRC and Labour Court and also, in about one in two cases, the use of facilitated negotiations. Around 25 per cent of firms rely to significant if varying degrees on ADR

practices combined with formal disputes procedures. Finally a small grouping of about 5 per cent of firms report using all conventional and ADR practices in combination and this group has been labelled as having adopted a 'hybrid ADR system'.

Table 3.3 Conflict Management Systems & Associated Practices

	Cluster 1	Cluster 2	Cluster 3	Cluster 4
	Minimal System	Traditional IR System	ADR System	Hybrid ADR System
Cluster Size/Proportions of firms with each system	41%	29%	25%	5%
Formal written grievance & disciplinary procedures involving progressively higher levels of management in resolving disputes	0.37	0.85	0.61	0.83
Resort at final stage in procedure, where deadlock remains, to Labour Relations Commission and Labour Court	0.02	0.80	0.33	0.94
Use of external experts (other than Rights Commissioners, LRC or Labour Court) to adjudicate disputes	0.10	0.32	0.06	0.84
Use of external experts early to assist in reaching settlement or to prevent deadlock in discussion or negotiation within the company	0.06	0.49	0.18	0.97
Use of 'brainstorming', problem-solving & related techniques to solve problems or resolve disputes	0.11	0.05	0.83	0.77
Use of formal interest-based ('win-win') bargaining techniques to resolve disputes	0.02	0.17	0.55	0.88
Intensive formal communication regarding impending change with groups of employees with a view to avoiding disharmony or conflict	0.20	0.44	0.68	0.98

As well as identifying levels and patterns of adoption of individual and group practices for handling conflict, the 2010 survey data also permit an analysis of influences on the uptake of these practices. Because firms have adopted practices for handling individual conflict in many permutations and combinations, the appropriate way to proceed is to examine influences on each discrete practice (see Roche & Teague 2012a). Union avoidance is not found to be associated with the adoption of the individual ADR practices reported in Table 3.1. Nor does the incidence of ADR practices vary on the whole depending on whether firms have recognized unions or not – the exceptions being resort to external experts in grievance handling and, more surprisingly, review panels comprising managers which are more pronounced in unionized firms. Firm size is of little significance as is whether businesses are engaged in manufacturing or services. US multinationals are significantly more likely than Irish firms to have used hot-line or related practices and ombudsmen and less likely to have used external experts. These features of US firms point to a preference for confining conflict management within the boundaries of organizations or for operating private systems of organizational justice (Roche & Teague 2012a). The most significant influence on the adoption of a range of individual ADR practices was the use by firms of a broader set of HRM practices. These were also associated with the incidence of multi-step individual grievance procedures. The set of HRM practices associated with the adoption of conflict management and ADR practices comprised a formal performance management system, individual performance-related pay, group performance-related pay, profit sharing/share ownership, formally-designated team-working, regular employee surveys, the assessment of employees' values, attitudes or personality at the time of hiring, a policy of no compulsory redundancies, common (single-status) terms and conditions of employment, a system of regular team briefing that provides employees with business information and internal career progression as a formal objective for all employees. The strong but by no means wholly consistent pattern of association between HRM, thus understood, and the adoption of ADR practices, suggests that ADR is commonly aligned with HRM. The alignment here is that just as HRM seeks to promote common objectives between firms and their employees, the use of ADR in conflict management seeks to emphasize interest-based and consensus-seeking ways of resolving conflict (Roche & Teague 2012a).

In examining influences on the adoption of practices for handling conflict involving groups of employees, we can take account of the finding that group practices have been adopted more systematically in bundles. As such we examine influences on the adoption of the

different conflict management systems outlined above, and the objective becomes identifying influences on the adoption by firms of any of these systems compared to other systems.³ The ADR system compared to the traditional industrial relations systems is much more likely to have been adopted in non-union companies. Firms with hybrid ADR systems have much the same profile with respect to unionization as firms with the traditional industrial relations system. Compared to the ADR system, the hybrid ADR system is also many times more likely to have been adopted by Irish-owned firms. Consistent with the results reported above, the adoption of the ADR and hybrid ADR systems is associated with firms' use of HRM practices (Roche & Teague 2011). A range of other possible influences such as sector, competitive strategy, the proportion of the workforce engaged in knowledge-intensive work and when operations commenced are found not to have influenced firms' decisions with respect to the kind of group conflict management systems adopted (see Roche & Teague 2011).

Table 3.4 Conflict Management Practices in Non-Union Multinationals in Ireland

	% Firms
Formal grievance procedure	100
Mediation	39.5
Facilitation	43.2
Arbitration	18.5
Employee hotline	25.9
Open door policy	97.5
Management review	65.4
Peer review	16.0
Ombudsperson	6.2
N=83	

Source: Derived from Doherty & Teague, 'Conflict Management Systems in Subsidiaries of Non-Union Multinational Organizations Located in the Republic of Ireland', *International Journal of Human Resource Management*, 22(1), 2011, p. 65.

Another source of survey data on conflict resolution in workplaces derives from Doherty & Teague's survey of 83 non-union multinational firms (Doherty & Teague 2011; Teague & Doherty 2011). Table 3.4 reports the results. Comparing these results to those from the 2008 survey of all firms, we find that incidence of conflict management practices that are comparable across the two surveys is much higher in multinationals than in the general population of firms. The practices in the non-union multinationals all appear to focus on the resolution of conflict involving individual employees. Doherty & Teague (2011: 65)

emphasize that only a minority of the firms surveyed (about 25 per cent) used a wide variety of conflict management practices, implying that conflict management systems were not widely prevalent in multinationals. One of the principal reasons given for this was that managers at the subsidiary level in multinationals avoided fostering innovation in this particular area of HR for fear of drawing attention to problems or to concerns about conflict in the workplace (Doherty & Teague 2011; Teague & Doherty 2011).

Looking beyond formal practices, middle-level line managers were found to play a key role in conflict management. As with the general pattern in firms in Ireland, the monitoring and evaluation of line management performance in this area was uncommon (Doherty & Teague 2011: 67). Again reflecting the pattern of influences for the general population of firms, in the case of multinationals, complying with employment legislation and resolving conflict in-house were identified as important influences on conflict resolution in multinationals, as was a concern to enhance employee morale and motivation (Doherty & Teague 2011: 66).

The role of line managers in conflict resolution can also be examined using data from the 2008 survey of firms with 20 or more employees (Hann *et al.* 2009). Table 3.5, overleaf, reports the views of the managers most familiar with how conflict is handled on various facets of line and supervisory managers' involvement in conflict management. In most firms line managers and supervisors are routinely engaged in the resolution of conflict in the workplace. In most firms they are also required to conduct regular face-to-face meetings with employees to gauge areas of concern and to resolve problems. The majority of firms expect line managers to play an important role in terms of continually gauging the mood of employees and solving any identified problems. In addition 76 per cent of firms either strongly agree or agree (21 per and 55 per cent respectively) with the statement that their organizations formally enable line managers to resolve employees' problems quickly and informally, wherever possible.

Table 3.5 Line Managers, Supervisors and Conflict Resolution

	% Firms					Mean [*]	SD [*]
	Strongly Agree	Agree	Hard to Say	Disagree	Strongly Disagree		
Line managers and supervisors are formally trained to handle workplace conflict	11.3	38.5	18.5	28.2	3.2	3.3	1.1
Line managers and supervisors are required to conduct regular face-to-face meetings with employees to gauge areas of concern to them and resolve problems	22.7	52.2	9.9	13.7	1.6	3.8	1.0
Line managers' and supervisors' competence in employee relations is specifically assessed when their own performance is being appraised	11.5	40.5	21.6	22.0	4.3	3.3	1.1
Line managers and supervisors are specifically and formally enabled to resolve employee problems quickly and informally whenever possible	21.0	54.6	11.4	10.8	2.2	3.8	1.0
In practice, line managers and supervisors lack the confidence to resolve workplace conflict and rely on HR managers or other senior managers [#]	15.3	33.1	19.9	25.0	6.7	2.8	1.2

* Means and standard deviations are based on 1–5 value scales, scored from least positive assessment (strongly disagree) = 1 to most positive assessment (strongly agree) = 5.

This item is reverse coded for comparability with other items.

It is evident that the majority of firms have assigned line managers and supervisors a role in preventing and solving workplace conflict. But what of support and incentive arrangements in place to encourage line managers and supervisors to perform this role? Just under half of the survey firms agreed that line managers and supervisors were formally trained to handle workplace conflict. In addition, just over half agreed that line managers' and supervisors' competence in employee relations was specifically assessed when their performance was being appraised. These results strongly suggest that line managers and supervisors are often involved in conflict resolution without formal organizational and management supports or incentives: without either training or formal accountability through the regular assessment of their performance in this area.

Just under half of the firms in the survey agreed with the statement that line managers and supervisors lacked the confidence to resolve workplace conflict and relied instead on HR managers or other senior managers for this purpose. Only 7 per cent strongly disagreed that line managers lacked the confidence to resolve workplace conflict and one in four respondents disagreed with the statement. This suggests that only about a third of the surveyed firms had a positive opinion about the confidence of line managers and supervisors to handle workplace conflict. This gained the lowest level of endorsement by firms in the survey. Overall, the findings suggest that a sizable number of firms are characterized by a major asymmetry or imbalance with respect to the activities of line managers and supervisors in managing conflict. Conflict management responsibilities are often delegated to line managers. However, the current support structures are inadequate and, as a result, line managers often have little capacity to handle conflict management confidently and without relying heavily on other executives.

Studies by Teague & Roche (2012) and Roche & Teague (2012b) based on the same survey examined whether proactive line and supervisory management engagement in conflict management affected a range of organizational outcomes. They also examined whether the prevalence of individual and collective ADR practices and configurations of conflict management practices resembling the properties of CMSs affected organizational outcomes. For these purposes firms were asked to assess their performance across a series of areas relative to other companies in their industry. The areas covered were the level of labour productivity, the rate of voluntary labour turnover, the rate of absence through sickness or other causes and the capacity to handle change. Responses were scored on a 1–5 scale, ranging from 1 = 'a lot below average' to 5 = 'a lot above average'. They were also asked to

respond to the following statement: ‘conflict resolution practices [in use] contribute positively to the climate of employment relations in the company’. The four response categories provided varied from ‘strongly disagree’ to ‘strongly agree’. A scale measuring greater or lesser degrees of line and supervisory management engagement with conflict resolution was created by summing the various facets of line and supervisory managers’ involvement in workplace conflict outlined in Table 3.5 above.

The analysis revealed that line and supervisory engagement in conflict resolution was positively associated with relative labour productivity and firms’ capacity to handle change. It was also associated with a positive employment relations climate and with a lower level of absenteeism to illness or other causes (Teague & Roche 2012). The simple incidence of individual or collective ADR practices was found to have no significant association with the outcomes examined.

The use of HRM practices and a proactive approach to managing conflict were direct antecedents of line and supervisory engagement in conflict resolution. Competitive postures emphasizing innovation or quality and knowledge-intensive work activity were indirect antecedents through their influence on the adoption by firms of HRM practices (Teague & Roche 2012).

There appear, thus far, to be few examples of formal purpose-designed CMSs in firms in Ireland – even among multinational firms where they might be expected to have a reasonable prevalence. Roche & Teague (2012b) sought evidence from the 2008 survey of the kinds of systems effects associated with CMS theory in the international literature. One of the key postulates of CMS theory is that rights-based and interest-based (ADR) conflict management practices in combination – and according to some versions of the theory in critical mass – should have significant positive effects on a range of organizational outcomes. Focusing on the outcomes discussed above, no evidence consistent with the theory could be found (see Roche & Teague 2012b). This finding needs to be understood in the light of the fact that in Ireland conflict management practices are seldom, it seems, proactively configured in accordance with the formal design principles set out in the CMS literature.

Data on the prevalence of procedures for managing bullying and harassment were collected in a 2006/7 survey of private and public sector employers. A half of all organizations reported having a formal policy on bullying and harassment, the incidence rising to 8 out of 10 organizations in the public sector (O’Connell *et al.* 2007: 79). Awareness of codes of practice

on bullying and harassment and organizational size were associated with the incidence of such policies. Thirty per cent of organizations reported having informal procedures for dealing with bullying, while 50 per cent had formal policies and 35 per cent used independent complaints procedures – these options not being mutually exclusive (O’Connell *et al.* 2007: 79). Thus it appears that both legislation on bullying and harassment at work and codes of practice influenced the diffusion of formal policies and procedures across organizations, especially in the case of organizations in the public sector.

Other Firm-Level Innovations in Conflict Resolution

So the focus has been on the incidence, antecedents and effects of conventional firm-level practices for resolving conflict, as well as of various forms of ADR associated in the main with Anglo-American innovations. The nature and outcomes of line and supervisory management involvement in conflict management have also been examined. But what of other departures from conventional practices and procedures for resolving conflict? The following sets of innovations merit discussion.

In-House Dispute Tribunals: Historically, some large Irish unionized firms, such as the state-owned electricity utility, the ESB, or the state broadcaster, RTÉ, established domestic committees or tribunals to resolve disputes. The ESB’s Joint Industrial Council originated in two statutory tribunals, one for white-collar and the other for manual workers, established to handle grievances and disputes involving the company’s pension schemes. Over time these developed into fully-fledged bodies for adjudicating claims and grievances and they were eventually merged into a single adjudication body. The RTÉ in-house Industrial Relations Tribunal was established in the mid-1990s in succession to a temporary ‘special adjudication committee’ formed in the wake of a serious strike in 1992. The tribunal issues binding decisions in respect of technology and work practices and non-binding decisions on other matters.

There have been a number of recent developments involving the creation of in-house dispute resolution bodies with various functions and powers. The environmental waste firm Oxigen agreed an in-house disputes resolution panel with SIPTU in 2006 as part of a new dual-channel disputes procedure. As part of an agreement with its unions on cost-saving and related measures after a sharp downturn in business in 2009, the Dublin Airport Authority (DAA) instituted an internal disputes committee, with an independent chair, to adjudicate in a non-binding manner on disputes arising during the implementation phase of the agreement. A

subsequent agreement on the start-up of the DAA's new Terminal 2 at Dublin Airport made provision for binding determinations by the committee (*Industrial Relations News*, 24 November 2010). The establishment of the internal disputes committee was a long-held management objective and reflected a concern to expedite dispute resolution and to counter 'narcotic' and 'chilling' effects that had left the company overly reliant on the LRC and the Labour Court (Roche *et al.* 2013:159-60).

Changes to conflict resolution procedures in the Central Bank and at Veolia Transport, the multinational firm that operates the Dublin city tram service (Luas), have also involved the creation of in-house dispute resolution tribunals. At Veolia a new disputes procedure involving the in-house tribunal replaced an existing 'no strike agreement'. The new procedure sets down a standard series of steps that include the referral of disputes to the LRC if the parties have been unable to resolve these through direct negotiations within the firm. If unresolved following resort to the LRC, disputes are referred to the Veolia Transport In-House Dispute Resolution Tribunal. This body has an independent chair and one nominee each from the company and union. The finding of the tribunal is intended to be authoritative but is binding only if the parties agree in advance. If a tribunal decision is rejected following a union ballot, the dispute is to be referred to the Labour Court. If the Labour Court's recommendation is rejected the union again ballots on industrial action. A further feature of the agreement is that it provides for adjudication on complaints from either of the parties that the procedure is not being adhered to (*Industrial Relations News*, 24 March 2010). The procedure was subsequently modified during the course of a dispute involving LUAS drivers when a facilitator brokered talks between management and the union prior to a Labour Court hearing (*Industrial Relations News*, 5 September 2012). The new procedure at the Central Bank is similar both in terms of the stages set down and in making provision for 'procedural adjudication' (*Industrial Relations News*, 21 March 2012). In both these cases a new procedural stage, involving a new body (the in-house tribunal), was created with a view to maximizing the scope for resolving disputes and avoiding industrial action. Procedural adjudication was also provided for and the new procedures in both organizations sought to give expression to a shared ethos of seeking evidence-based solutions to disputes and promoting 'problem-solving'. In a further development at the Central Bank, an overhaul of the performance management system made provision for an independent appeals process, the outcome of which is binding (*Industrial Relations News*, 20 February 2013).

Following a series of disputes resulting in serious disruptions to its business, Aer Lingus and its unions have reportedly been considering the option of establishing an internal tribunal to facilitate the speedier and more definitive resolution of disputes at the airline (*Industrial Relations News*, 17 July 2014).

No-Strike Arrangements: Some revisions to disputes procedures have involved the introduction of binding arbitration or adjudication as the final stage of procedure. While such a step could be tantamount to the introduction of no-strike clauses to collective agreements, in practice the scope of binding arbitration or adjudication tends to be circumscribed in various ways. The disputes procedure in OxiGen sets down two alternative channels for resolving disputes. The first of these is a standard multi-step procedure, culminating in referral to the LRC and Labour Court. The second makes provision for the involvement of a two-person team of ‘joint facilitators’ who act in a mediating capacity. Where mediation fails there is provision for onward referral to the in-house disputes resolution panel for binding arbitration. The panel comprises the joint facilitators and an independent chair. This arrangement resembles ‘med-arb’, where mediators play a role in arbitration. This procedural channel was used to resolve a dispute over the crewing of new trucks (*Industrial Relations News*, 14 June 2006, 20 September 2006). A further instance of the circumscribed use of binding arbitration as a final stage in procedure arises in a cost-saving agreement in the ESB. Under the agreement disputes over how shortfalls from agreed cost-saving targets are to be achieved are referred to binding arbitration by the ESB’s Joint Industrial Council (*Industrial Relations News*, 16 January and 20 February 2013). A more all-encompassing case of a no-strike arrangement arising under the start-up agreement for Terminal 2 at Dublin Airport provides for binding arbitration by the firm’s internal disputes body on matters covered by the agreement (*Industrial Relations News*, 24 November 2010).

Work Continuity Clauses: Whether formally or informally collective agreements in Ireland historically have often incorporated *status quo* clauses or conventions whereby disputed terms and conditions or work practices continue to obtain pending the resolution of disputed arrangements through agreed procedures (Von Prondzynski & Richards 1994: 165). What seems like the reverse of this principle has become a feature of revised disputes procedures in some firms. In these cases, pending the resolution of a disputed work practice or management direction, employees are expected to accept a manager’s instruction, possibly under protest. This principle is contained in a disputes procedure agreed between the Dublin Port Tunnel operator, Transroute Tunnel Operations, and SIPTU (*Industrial Relations News*, 12 March

2008). The same principle is found in a new disputes procedure agreed between Aer Lingus and SIPTU. The Aer Lingus-SIPTU agreement states that ‘if a dispute arises regarding any matter covered by this agreement, in order to preserve the smooth running of the operation the employee will unreservedly work as instructed by their supervisor/manager pending a resolution of the dispute’ (*Industrial Relations News*, 16 June 2010). A reference in the same procedure that unresolved disputes should be referred to the Labour Court for ‘decision and enforcement’ led to disagreement between the parties as to whether Labour Court recommendations would henceforth be binding (which would in effect introduce a ‘no-strike’ provision into the procedure) – an interpretation disputed by the union (*Industrial Relations News*, 16 June 2010). A restructuring agreement concluded between the insurance firm FDB and its unions also contained a clause in the grievance and disputes procedure which stated that ‘in the event of a dispute arising on the implementation and interpretation of the agreement, employees agree to work in accordance with management instruction, under protest if necessary, while the point at issue is processed through normal procedure’ (*Industrial Relations News*, 13 April 2011).

Organizational ombudsman services: To date few organizational ombudsmen services have been reported in organizations in Ireland and, some that have, seem to resemble investigation functions more than the advisory and facilitative services typically provided by organizational ombudsmen. GE Healthcare and University College Cork provide instances where staff ombuds functions of different types are in place. The staff ombuds service in UCC was introduced in the wake of several high-profile conflicts and is designed to operate like a classical organizational ombudsman service, providing advice and guidance to parties involved in work-related grievances but with no powers of investigation or compulsion.

Mediation and facilitation: Some unionized organizations have introduced mediation into procedures for grievance handling. The grievance procedure in the telecommunications firm, Eircom, which was originally agreed in the then state-owned company Telecom Éireann, contains a final stage that involves referral to what is referred to as a ‘Mediation Committee’. The committee has an independent chair and up to three members, drawn from management and unions. The committee issues a report and a recommendation. Mediation, thus understood, seems very much like adjudication with the panel operating more along the lines of a peer review body than through mediation in the more widely understood sense.

Mediation in the more usual sense is provided for in the Central Bank under a further development in the conflict resolution procedure. Trained internal volunteers act as mediators within a procedure that seeks to resolve workplace grievances informally as close to the source as possible, without resorting to more formal processes. The issues that can be referred to mediation appear unrestricted (*Industrial Relations News*, 5 December 2012). In the case of the Oxygen disputes procedure, one of the two agreed channels involves mediation by joint facilitators, prior to arbitration. In 2009 the Health Service Executive (HSE) introduced a national mediation policy and procedure within the health and social care services. The new procedure followed a review of policy on dignity and respect at work. Trained internal mediators provide the service within the remit of the HSE dignity at work policy. Other workplace problems can also be mediated (HSE 2009a). Mediation can be attempted at any or all stages of the procedure subsequent to attempts by local managers to resolve grievances directly. A 'loop back' facility is also provided for allowing the parties to enter mediation during formal investigation or subsequent to this. An Annual Mediation Report for 2009 recorded 66 cases for the six months of the year during which mediation was in operation. Most of the cases related to allegations of workplace bullying (HSE 2009b). No further reports have been published. In a case involving a worker disputing being moved from one position to another in the medical device manufacturer, Covidien, the Labour Court recommended that mediation be used to facilitate the worker returning to their previous position (*Industrial Relations News*, 15 May 2013). A new service was established by a group of independent professionals aimed at providing a range of mediation and investigation services in circumstances where incidents of conflict involved senior executives (*Industrial Relations News*, 12 March 2013). The Pensions Ombudsman also advocated the use of mediation in grievances arising from disputes as to pension entitlements (*Industrial Relations News*, 5 June 2013).

The establishment of mediation programmes supported by internal or external mediators has escalated in recent years. Other than the cases outlined above, mediation programmes have been established across a wide range of firms and organizations including Aramark, Irish Rail, An Post, ESB, Dublin Port, Bus Éireann, Dublin Bus, Teagasc, The Courts Service and a number of local authorities.

In the areas of industrial relations and collective bargaining, a 'mediator' to work with employers and unions to address perceptions of an uncompetitive industrial relations environment in the Irish film industry was appointed by the Minister for Arts, Heritage and

the Gaeltacht (*Industrial Relations News*, 5 June 2013). A mediator also became involved in a dispute between Hewlett-Packard and the IBOA and acting, it appeared, in a quasi-adjudicative capacity, put forward proposals on the resolution of the issues in dispute between the parties (*Industrial Relations News*, 16 January 2013).

Private facilitators, engaged by organizations (by agreement with their unions), have become an established feature of collective conflict resolution in Irish industrial relations during the past couple of decades. Private facilitators are commonly engaged to support collective bargaining in circumstances involving complex, multi-stranded change and restructuring programmes. Examples are provided by the engagement of private facilitators in Ulster Bank, the Central Bank, Wyeth (now Nestlé) Nutritionals, Dublin City Council and Boliden Tara Mines. The LRC has also been involved in many of these disputes and also very commonly provides support in circumstances involving complex, multi-stranded change and restructuring programmes.

While the Labour Court more frequently refers complex cases back to the LRC for further deliberation, the Court occasionally mandates private facilitation or co-facilitation. This occurs in instances where the Court forms the view that the parties to disputes could benefit from further direct engagement. Examples of facilitation and co-facilitation mandated by the Labour Court are provided by a dispute over pay at Liebherr Container Cranes, a dispute over security services at the Central Bank and a dispute over staffing levels at Monaghan General Hospital. Instances have also arisen, as in case of the 2014 dispute over temporary pay cuts at Irish Rail, where employers have engaged a private facilitator subsequent to the rejection of Labour Court recommendations to explore whether a basis for settlement might still be found.

Conclusions

This paper has presented an overview of the development of conflict resolution in Ireland. It began by reviewing the development of the main national conflict management institutions which came to occupy a central role in both collective and individual conflict resolution at work. The emergence and development of these institutions reflected an abiding pattern of pragmatic and short-term change and innovation which has resulted in a complex set of institutions with overlapping jurisdictions and duplicated functions. Within these institutions there has been some modest innovation in service provision. Growing unease about the conflict resolution system and the search for cost cutting led to pressure to reform the conflict resolution institutions. The reform blueprint, which involves merging the existing agencies

into two conflict resolution bodies, amount to the most radical overhaul of the conflict resolution system since the establishment of the Labour Court in 1946. Legislation is also pending that encourages the wider use of mediation in a range of areas, including disputes and grievances in workplaces.

Conflict resolution in workplaces evolved in line with the professionalization of personnel management and the growing body of employment legislation. Conventional multi-step procedures for resolving individual grievances and collective disputes are now widely prevalent among large firms and multinationals, although smaller firms often still seem to be reliant on *ad hoc* arrangements, improvisation and informality. ADR practices have also become a feature of conflict resolution. These remain of limited incidence in grievance handling and only unusually appear to be adopted in any systematic manner. Various forms of ADR for addressing group or collective conflict are more pronounced and these seem part of a more systematic pattern of conflict management. ADR or hybrid ADR systems now feature in about 30 per cent of all firms employing at least 50 employees. The antecedents of ADR practices include the growing body of employment legislation, attempts by firms to improve employment relations, a concern to confine conflict resolution within the boundaries of firms and HRM. In the case of non-union multinationals, research indicates that the systematic adoption of sets of conflict management practices has been hindered by subsidiary managers' anxiety about being seen to innovate in this particular area of HRM.

The pattern with respect to line and supervisory management involvement in conflict resolution is a diverse one. Line and supervisory managers often play significant roles in resolving conflict but they commonly do so without organizational supports, such as training, or without being held accountable for their performance in this area. Line and supervisory engagement in conflict resolution is found to be associated with a series of positive organizational outcomes. Little evidence can however be found that the simple incidence of ADR practices affects organizational performance. Nor can any evidence be found for the kinds of positive systems effects on organizational performance that are proposed by advocates of conflict management systems theory.

With respect to other firm-level innovations, a series of sometimes overlapping innovations are evident in the use of in-house tribunals, new procedural stages, work continuity and no-strike arrangements and in mediation or facilitation within the workplace. While significant, these innovations appear far from widespread. Nor are they often the outcomes of systemic

changes involving multiple innovations or wholesale changes in procedure – even in circumstances where they occur under an agreed rubric of joint commitment to problem-solving and evidence-based dispute resolution.

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Notes

¹ The statistical modelling method used is latent class cluster analysis. For details see Roche & Teague 2011.

² Because the response rate among smaller firms was significantly lower than for larger, the analysis was confined to firms with 50 or more employees.

³ The method of statistical analysis used is multinomial regression. For details see Roche & Teague 2011.